

# Understanding age in Child Protection guidance and Adult Support and Protection legislation

## **Guidance and legislation table**

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APRIL 2024

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The table below is extracted from the report *Understanding age in Child Protection guidance and Adult Support and Protection legislation* written by Hannah Martin and published by Iriss in April 2024.

For the additional information, and to download the full report, please visit: [www.iriss.org.uk/16to17](http://www.iriss.org.uk/16to17)

## CHILD PROTECTION GUIDANCE

The **National Guidance for Child Protection in Scotland 2021 – updated 2023** – outlines child protection processes. This non-statutory guidance is underpinned by the following key pieces of legislation:

**The Children (Scotland) Act 1995** covers parental responsibilities and rights, and the duties and powers local public authorities have for supporting and promoting the safety and welfare of children.

The principles behind the Act (The Scottish Office, 1993) were that:

- Each child has the right to be treated as an individual
- Each child who can form a view on matters affecting him or her has the right to express those views if he or she so wishes
- Parents should nominally be responsible for the upbringing of their children and should share that responsibility
- Each child has the right to protection from all forms of abuse, neglect or exploitation
- So far as is consistent with safeguarding and promoting the child's welfare, the public authority should promote the upbringing of children by their families
- Any intervention by a public authority in the life of a child must be properly justified and should be supported by services from all relevant agencies working in collaboration

There were three main themes including that:

- The welfare of the child is the paramount consideration when his or her needs are considered by the Courts and Children's Hearings
- No Court should make an Order relating to a child and no Children's Hearing should make a supervision requirement unless the Court or Hearing considers that to do so would be better for the child than making an Order or supervision requirement at all
- The child's views should be taken into account where major decisions are to be made about his or her future

## ADULT SUPPORT AND PROTECTION LEGISLATION

**The Adult Support and Protection (Scotland) Act 2007** provides measures to identify, and to provide support and protection for, those individuals who are vulnerable to being harmed whether as a result of their own or someone else's conduct. These measures include:

- A set of principles which must be taken into account when performing functions under the Act
- Placing a duty on Councils to make the necessary inquiries to establish whether or not an adult is at risk of harm and whether further action is required to protect the adult's well-being, property, or financial affairs
- Placing a duty on certain public bodies and office holders to cooperate in inquiries
- Introducing a duty to consider the provision of advocacy or other services after a decision has been made to intervene
- Permitting, in certain circumstances, the medical examination of a person known or believed to be at risk of harm
- Requiring access to records held by agencies in pursuance of an inquiry
- Introducing a range of protection orders which are defined in the Act, namely:
  - Assessment orders
  - Removal orders
  - Banning orders
- Requiring the establishment of multi-agency Adult Protection Committees

**The Adult Support and Protection code of practice** can be accessed on the Scottish Government website.

## CHILD PROTECTION GUIDANCE

## ADULT SUPPORT AND PROTECTION LEGISLATION

**The Children's Hearings (Scotland) Act 2011** sets out the legal basis for the care and protection of children by the imposition of Compulsory Supervision Order. The Act sets out the duties and powers of local authorities, police officers and others to make a referral to the Principal Reporter. The act also sets out the legislation governing emergency measures for child protection of children, including child protection and child assessment orders, emergency applications to justices of the peace and the powers of a constable to remove a child to a place of safety.

**The Children and Young People (Scotland) Act 2014** amends the Children (Scotland) Act 1995 to ensure children's rights are upheld.

The **Police and Fire Reform (Scotland) Act 2012** places a statutory duty on police officers to, amongst other things, detect and prevent crime. Therefore child protection is a fundamental part of the duties of all police officers.

The non-statutory National Guidance for Child Protection in Scotland (2021) updated 2023 describes the responsibilities and expectations for all involved in protecting children in Scotland.

The Guidance refers to child protection as the processes involved in consideration, assessment and planning of required action, together with the actions themselves, where there are concerns that a child may be at risk of harm. Child protection procedures (as described in Part 3) are initiated when police, social work or health professionals determine that a child may have been abused or may be at risk of significant harm.

Child protection involves:

- Immediate action, if necessary, to prevent significant harm to a child
- Inter-agency investigation about the occurrence or probability of abuse or neglect, or of a criminal offence against a child. Investigation extends to other children affected by the same apparent risks as the child who is the subject of a referral

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
<ul style="list-style-type: none"> <li>• Assessment and action to address the interaction of behaviour, relationships and conditions that may, in combination, cause or accelerate risks</li> <li>• Focus within assessment, planning and action upon listening to each child’s voice and recognising their experience, needs and feelings</li> <li>• Collaboration between agencies and persistent efforts to work in partnership with parents in planning and action to prevent harm or reduce risk of harm</li> <li>• Recognition and support for the strengths, relationships and skills within the child and their world in order to form a plan that reduces risk and builds resilience</li> </ul>	
<b>SUBJECT TO PROVISION</b>	
<p>The National Guidance for Child Protection 2021 – Updated 2023 defines children as follows:</p> <p><i>In general terms, for the purposes of this Guidance, the protection of children and young people includes unborn babies, and children and young people under the age of 18 years.</i></p> <p>There is some variance in how children and adults are defined across legislation and guidance. For 16 and 17 year olds, this means there might be occasions where they are considered and treated as children; and others where they are considered and treated as adults.</p> <p>The <b>Adults with Incapacity (Scotland) Act 2000</b> safeguards people who do not have capacity in relation to making decisions about their welfare and/or finances. This legislation defines ‘adults’ as those who have attained the age of 16.</p>	<p>Adults at risk:</p> <ol style="list-style-type: none"> <li>1. “Adults at risk” are adults (aged 16 and over) who— <ul style="list-style-type: none"> <li>- Are unable to safeguard their own well-being, property, rights or other interests,</li> <li>- Are at risk of harm, and</li> <li>- Because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.</li> </ul> </li> <li>2. An adult is at risk of harm for the purposes of subsection (1) if <ul style="list-style-type: none"> <li>- Another person’s conduct is causing (or is likely to cause) the adult to be harmed, or</li> <li>- The adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm.</li> </ul> </li> </ol> <p><b>Section 3(1)</b> defines an ‘adult at risk’ as someone who meets all of the following three-point criteria:</p> <ul style="list-style-type: none"> <li>• They are unable to safeguard their own well-being, property, rights or other interests;</li> </ul>

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
	<ul style="list-style-type: none"> <li>• They are at risk of harm; and</li> <li>• Because they are affected by disability, mental disorder, illness or physical or mental infirmity they are more vulnerable to being harmed than adults who are not so affected.</li> </ul> <p>It should be noted and strongly emphasised that the three-point criteria above make no reference to capacity. For the purposes of the Act, capacity should be considered on a contextual basis around a specific decision, and not restricted to an overall clinical judgement. It is recognised that, due to many factors in an individual's life, capacity to make an authentic decision is a fluctuating concept. Thus, even if deemed to possess general capacity, attention must be paid to whether a person has clear decisional and executorial ability (i.e. to both make and action decisions) to safeguard themselves in the specific context arising.</p> <p>When an adult does not meet the three point criteria, other legislation/ interventions might be considered.</p>
DEFINITIONS OF HARM	
<p>The National Guidance for Child Protection in Scotland 2021 – Updated 2023 defines harm and significant harm in the following way:</p> <p>Protecting children involves preventing harm and/or the risk of harm from abuse or neglect. Child protection investigation is triggered when the impact of harm is deemed to be significant.</p> <p>‘Harm’ in this context refers to the ill treatment or the impairment of the health or development of the child, including, for example, impairment suffered as a result of seeing or hearing the ill treatment of another.</p> <p>‘Development’ can mean physical, intellectual, emotional, social or behavioural development. ‘Health’ can mean physical or mental health.</p> <p>Forming a view on the significance of harm involves information gathering, putting a concern in context, and analysis of the facts and circumstances.</p>	<p>Section 3(2) of the Act defines an adult as being at risk of harm if:</p> <ul style="list-style-type: none"> <li>• Another person's conduct is causing (or is likely to cause) the adult harm; or</li> <li>• The adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm.</li> </ul> <p>Adults can be at risk of harm in various settings, be it in their own homes, in the wider community, or in a hospital setting. They also may be placed at risk through inappropriate arrangements for their care in a range of social or healthcare settings. Perpetrators of harm can include families and friends, informal and formal carers, fellow users of residential and daycare services, fraudsters and members of the public.</p>

## CHILD PROTECTION GUIDANCE

For some actions and legal measures there will be an essential legal test of significant harm. There is no legal definition of 'significant harm' or the distinction between harm and significant harm. It is a matter for professional judgement as to whether the degree of harm to which the child is believed to have been subjected, is suspected of having been subjected, or is likely to be subjected is 'significant,' and relates to the severity or anticipated severity of impact upon a child's health and development.

### CHILD ABUSE AND CHILD NEGLECT

Abuse and neglect are forms of maltreatment. Abuse or neglect may involve inflicting harm or failing to act to prevent harm. Children may be maltreated at home; within a family or peer network; in care placements; institutions or community settings; and in the online and digital environment. Those responsible may be previously unknown or familiar, or in positions of trust. They may be family members. Children may be harmed pre-birth, for instance by domestic abuse of a mother or through parental alcohol and drug use. Further detail on different types of abuse and neglect can be found in Part 1 of the National Guidance.

## ADULT SUPPORT AND PROTECTION LEGISLATION

Section 53 states that "harm" includes all harmful conduct and gives the following examples:

- Conduct which causes physical harm;
- Conduct which causes psychological harm (for example by causing fear, alarm or distress);
- Unlawful conduct which appropriates or adversely affects property, rights or interests (for example theft, fraud, embezzlement or extortion);
- Conduct which causes self-harm.

The list is not exhaustive and no category of harm is excluded simply because it is not explicitly listed. In general terms, behaviours that constitute harm to a person can be physical, sexual, psychological, financial, or a combination of these. The harm can be accidental or intentional, as a result of self-neglect, neglect by a carer or caused by self-harm and/or attempted suicide. Other forms of harm can include domestic abuse, gender-based violence, forced marriage, female genital mutilation (FGM), human trafficking, stalking, scam trading and hate crime. Some such cases will result in adults being identified as at risk of harm under the terms of the Act, but this will not always be the case.

The criteria for granting an assessment order (s12); removal order (s15); or banning order (s20) includes reference to the likelihood of the adult being "seriously harmed."

## DUTY ON THE AUTHORITIES TO INVESTIGATE/INQUIRE

Everyone has a responsibility, individually and collectively, to protect vulnerable people in our communities. This cuts across all aspects of private life and professional business. Supporting individuals at risk of harm is best done through collaboration and with a sense of community responsibility.

The expectation is that decision-making should take place on a multi-agency basis to enable full and complete assessment and discussion of potential protective actions. The multi-agency nature of adult and child protection work is crucial to the work of protecting individuals from harm.

Section 19 of The Children (Scotland) Act 1995 places a duty to safeguard and promote the welfare of children on the local authority as a whole, and encompasses social work services, education, housing and any other relevant services required to safeguard and promote the welfare of such children.

A constable may remove a child to a place of safety under section 56 of the Children's Hearings (Scotland) Act 2011 if the provisions of the legislation are met.

The Act also states that the local authority must make all necessary inquiries into the child's circumstances if it appears that the child is in need of protection, guidance, treatment or control, and if it might be necessary for a Compulsory Supervision Order to be made in relation to the child. The local authority must give the Principal Reporter any information they have about the child.

Police will share child concerns and concerns relating to children coming into conflict with the law with the Reporter where children are considered in need of protection, guidance, treatment or control and maybe necessary for a Compulsory Measure of Supervision Order or who are already subject to a Compulsory Supervision Order in terms of Section 60 the Children's Hearing (Scotland) Act 2011.

The duty to undertake a child protection investigation is outlined in the non-statutory National Guidance for Child Protection in Scotland 2021 – updated 2023. This guidance outlines the immediate actions that may be necessary to protect a child i.e. Child Protection Order (CPO) but also highlights an Inter-agency Referral Discussion (IRD) as the next critical phase in risk assessment and response following notification of a child protection concern.

A council must make inquiries about a person's well-being, property or financial affairs if it knows or believes that the person is an "adult at risk" and that it might need to intervene (by way of this Act or otherwise) in order to protect the person's well-being, property or financial affairs.

The Act places duties upon the council to:

- Make inquiries if it knows or believes that a person is an adult at risk of harm and that it might need to intervene under the Act or otherwise to protect the person's wellbeing, property or financial affairs (Section 4);
- Undertake investigative activity, as part of its inquiries, involving council officers who have certain powers under the Act (Sections 7-10);
- Co-operate with other councils and other listed (or specified) bodies and office holders (Section 5);
- Have regard to the importance of the provision of appropriate services (including, in particular, independent advocacy services), where the council considers that it needs to intervene in order to protect an adult at risk of harm (Section 6);
- Make visits, with right of entry, for the purpose of conducting interviews and arranging medical examinations (sections 7, 8, 9 & 36 – 40);
- Protect property owned or controlled by an adult who is removed from a place under a removal order (Section 18);
- Set up an Adult Protection Committee to carry out various functions in relation to adult protection in its area, and to review procedures under the Act (Section 42).



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## ADULT SUPPORT AND PROTECTION LEGISLATION

It should be recognised that an individual's vulnerabilities, health conditions and abilities can fluctuate and evolve over time. Practitioners should be alert to the need for re-assessment or for re-evaluation of an individual's circumstances against the three-point criteria.

The Act requires the principles to be applied when deciding which measure will be most suitable for meeting the needs of the individual. Any person or body taking a decision or action under the Act must be able to demonstrate that the principles in sections 1 and 2 have been applied.

The principles in section 1 require that any intervention in an adult's affairs under the Act should:

- Provide benefit to the adult which could not reasonably be provided without intervening in the adult's affairs; and
- Be the option that is least restrictive to the adult's freedom.

A public body or office holder performing ASP functions must take into account the views of the adult and their family/carers; guardian or attorney of the adult; and any other person who has an interest in the adult's well-being or property, which are known to the public body or office-holder. The adult must also be provided with the information needed to keep them involved in any decision, recognising their background and treating them equally as they would treat others.

## CHILD PROTECTION GUIDANCE

## ADULT SUPPORT AND PROTECTION LEGISLATION

### ASP/CP REFERRALS AND REPORTS OF CONCERN (CHILD)

Any individual can identify a concern that a child or young person may be at risk from abuse, neglect, exploitation or violence. Consent is not required when making a referral about a child or young person who may be at risk from abuse, neglect, exploitation or violence. Concerns about risk to a child or young person should be reported without delay to social work or, in situations where risk is immediate, to Police Scotland.

An ASP referral can be submitted to the council where the person is by any individual, including by the individual themselves. In some areas where health and social care is integrated, referrals may be made directly to social work departments. Referrals can be made anonymously.

Section 5(3) of the Act places a duty on certain public bodies or office holders who know or believe that a person is an adult at risk of harm and that action needs to be taken to protect them from harm, to make a referral by reporting the facts and circumstances of the case to the council for the area in which the person is considered to be located.

It is not the referral source's responsibility to confirm that the adult meets the three-point criteria; it is enough that one believes the individual to meet the criteria to warrant an ASP referral. Any information that can be provided at the referral stage will assist the local authority in undertaking adult protection inquiries.

Good practice would dictate that even if in doubt the referral should be made and should be counted as a referral by the council/receiving social work department.

### ROLE OF CONSENT REGARDING REFERRALS

**Consent of the child is not required for a child protection referral to be made.**

**The adult's consent is not required for a referral to be made.**

Whilst adults with capacity have the right to consent or otherwise, there may be a lawful basis to share information – including information shared to make a referral – under the 2007 Act without this consent. There is a difference between medical consent and data sharing consent. It is important to be open and transparent with the adult, and vital that all decisions and rationale are recorded.

## SHARING INFORMATION WITH OTHERS, INCLUDING PARENTS

Regardless of age, the individual will be asked if relevant information can be shared with parents, carers and relevant others. For all 16/17 year olds who are referred for ASP or CP, consideration should be given to sharing information with parents, carers, and/or other professionals to inform risk assessment and protection. Decisions on sharing information with or without permission for this age group are informed by the individual circumstances of the case. Guidance about involving children and families in child protection processes are detailed in paragraphs 3.127-3.138 of the National Child Protection Guidance, with particularly 3.133 and 3.135 relevant.

In certain circumstances, information must be shared, as a key part of keeping a child safe from harm. Where there is a child or adult protection concern, relevant information should be shared with the relevant professionals without delay (including social work, health and police), provided it is justifiable, proportionate and lawful to do so, based on the potential or actual harm to adults or children at risk. The rationale for decision-making should always be recorded.

People should not be pressured to consent to their information being shared. However, there may be times where sharing information is shared lawfully, without gaining the consent of the people to whom the information pertains.

Further information around UK GDPR and consent in respect of data sharing can be found on the [Information Commissioner's Office website](#).

Guidance highlights that practitioners should presume that children have the capacity to form their own views; and make decisions based on those views. Where there is evidence to suggest that the child does not have this capacity, consent should be sought from the parent, unless there are reasons not to do so.

Further information regarding the sharing of information under Adult Support and Protection processes can be found in the [ASP Code of Practice](#), including a checklist for practitioners, to guide decisions about whether or not to share information.

If possible, the individual's consent should be attained prior to sharing information (e.g., sharing records) but, for the avoidance of doubt, where disclosing information to the appropriate authorities seeks to address a perceived risk of harm to that individual, it is in the public interest to do so. This legal duty applies to all employees and officers of the relevant public bodies and overrides any general duty of confidentiality. Where the adult is incapable of consent, it would be good practice to approach the Office of the Public Guardian to ascertain whether a guardian or attorney may consent on their behalf.

Where no guardian or attorney has such powers, consideration may be given to whether it is appropriate to use the provisions in the Adults with Incapacity (Scotland) Act 2000 or Section 34 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

## INTER-AGENCY REFERRAL DISCUSSIONS (IRDS)

When information is received by police, health or social work that a child may have been abused or neglected and/or is suffering or is likely to suffer significant harm, an IRD must be convened without undue delay. An IRD will coordinate decision-making about such investigation and action as may be needed to ensure the safety of children involved.

In the National Guidance for Child Protection, an IRD is defined as follows:

*An inter-agency referral discussion (IRD) is the start of the formal process of information sharing, assessment, analysis and decision-making following reported concern about abuse or neglect of a child or young person up to the age of 18 years, in relation to familial and non-familial concerns, and of siblings or other children within the same context. This includes an unborn baby that may be exposed to current or future risk.*

Practitioners in police, social work and health must participate in the IRD; participation of other professionals, particularly those from education or ELC, should be considered based on their involvement with the child.

Some areas in Scotland have ASP procedures that involve IRDs (sometimes also called Initial Referral Discussions) but these are not statute. An IRD is a professional discussion held with relevant representatives from social work, health, police and any other agency with knowledge of the adult at risk of harm; IRD processes, including criteria for convening them, vary. The sharing of information and planning of approaches can be conducted by phone, electronically, or in person. IRDs provide a forum for inter-agency discussion and decision-making about the next steps in protecting an individual. As such, they will broadly address the same matters as outlined above in the initial stage of an inquiry but build in an expectation of inter-agency engagement and discussion to the process. It is for local partnerships to decide if they include IRDs in their processes.

## CHILD PROTECTION PLANNING MEETINGS AND ASP CASE CONFERENCES

**CHILD PROTECTION PLANNING MEETINGS (CPPM)**

These meetings follow on from IRDs, to decide whether the child requires a Child Protection Plan, and should be placed on the Child Protection register. All relevant agencies share information, and children and their families are supported to attend where possible.

The CPPM is a formal multi-disciplinary meeting, which must include representation from the core agencies (social work, health and police) as well as any other agencies currently working with the child and their family, including education. The child and relevant family members should be invited and supported to participate, as appropriate in each situation. Where they are unable to participate in person if possible their views should be sought and represented at the meeting.

**ADULT SUPPORT AND PROTECTION CASE CONFERENCES**

Subsequent to inquiries and investigative activity, the multi-agency assessment may be considered by an inter-agency Adult Support and Protection Case Conference. A case conference could be convened when there are concerns that an adult is at risk of harm and the engagement of the adult and all relevant agencies in the assessment of risks and strengths, and in planning for next steps, is required. This will be assisted by the collation, in advance of the case conference, of up to date and well-balanced inter-agency chronologies. The collated chronology may be updated to reflect information arising from the case conference.

Such meetings should be as inclusive as possible with the presumption that, barring serious risks to attendance, the adult themselves will be in attendance or that arrangements have been made to ensure that the adult's views and wishes can be conveyed to the meeting.

The needs of many people may mean that a case conference convened as part of adult support and protection concerns may also need to consider other options for protecting people including under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003, and the Adults with Incapacity (Scotland) Act 2000. However, such considerations should not compromise any actions that may need to be taken under Adult Support and Protection legislation. It may be helpful to have a Mental Health Officer present at a case conference.

A support and protection plan may be agreed across all relevant agencies, including identification of who is responsible for each aspect of the support and protection plan, the anticipated timetable, and reporting arrangements.

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
	<p>If a review meeting has been agreed, the decision may also be taken to convene a core group between case conferences. A lead professional – likely to be the council officer – should be identified to be kept informed of relevant updates relating to the adult and implementation of the support and protection plan; and lead professionals to comprise the core group who will work with the plan should be identified.</p>
<b>ORDERS AND/OR INTERVENTIONS</b>	
<p>For ASP, consent from the adult is required before any of the protection orders can be carried out. The only exception to this would be in the event that a Sheriff found that the adult declined to consent to the order, as a result of undue pressure from another individual. <b>Section 5</b> of the ASP (Scotland) Act 2007 provides further information about undue pressure.</p>	
<p><b>CHILD PROTECTION ORDER (CPO)</b></p> <p>In practice, child protection orders are usually applied for by a local authority. However, anyone, including the local authority, can apply for a Child Protection Order under the following criteria when there are reasonable grounds to believe that: the child has been, or is being, treated in such a way that the child is suffering or is likely to suffer significant harm; or the child has been, or is being, neglected, and as a result of the neglect the child is suffering or is likely to suffer significant harm; or the child is likely to suffer significant harm if the child is not removed to and kept in a place of safety; or the child is likely to suffer significant harm if the child does not remain in the place at which the child is staying (whether or not the child is resident there) and the order is necessary to protect the child from that harm or from further harm (s39 of the Children’s Hearings (Scotland) Act 2011 ).</p>	<p><b>REMOVAL ORDER</b></p> <p>Allows the council to remove the adult at risk to a specified place in order to assess their situation and to support and protect them. The adult must be moved within 72 hours of the order being made and expires up to 7 days after the day the adult is moved. Application can be made to vary or recall a removal order. A warrant for entry will also be granted. A removal order expires 7 days (or such shorter period as may be specified in the order) after the day on which the specified person is moved in pursuance of the order. Application may be made to a Justice of the Peace under certain circumstances. In this case the adult must be moved within 12 hours and the order may only be granted for up to 24 hours (s14-18 and s39-40).</p>

## CHILD PROTECTION GUIDANCE

### EXCLUSION ORDER

This may be granted when on application of a local authority a Sheriff is satisfied that excluding a named person from the family home is necessary for the protection of the child, irrespective of whether the child is for the time being residing in the family home. The order will only be granted if it better safeguards the child's welfare than the removal of the child from the family home, and if there will be a person specified in the application who is capable of taking responsibility for providing appropriate care for the child and any other member of the family who requires care, and who is, or will be, residing in the family home. The test for granting is that the child has suffered, is suffering, or is likely to suffer, significant harm as a result of any conduct, or any threatened or reasonably apprehended conduct, of the named person (s76 Children (Scotland) Act 1995). A power of arrest may be attached to an interdict associated with such an order. The maximum duration of such an order is six months (s78 and 79 of the 2011 Act).

## ADULT SUPPORT AND PROTECTION LEGISLATION

### BANNING AND TEMPORARY BANNING ORDERS

These orders will only be granted where the adult at risk is in danger of being seriously harmed. The order bans the subject of the order from being in a specified place and may have other conditions attached to it. A banning order may also:

- Ban the subject from being in a specified area in the vicinity of the specified place;
- Authorise the summary ejection of the subject from the specified place and the specified area;
- Prohibit the subject from moving any specified thing from the specified place;
- Direct any person to take measures to preserve any moveable property owned or controlled by the subject which remains in the place while the order has effect;
- Require or authorise any person to do, or to refrain from doing, anything else which the Sheriff thinks necessary for the proper enforcement of the order

The Sheriff may grant a temporary banning order pending determination of an application for a banning order. A banning order may last for up to 6 months. Any decision to grant or refuse to grant a banning or temporary banning order can be appealed to the Sheriff principal.

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<p><b>CHILD ASSESSMENT ORDER</b></p> <p>The 2011 Act (sections 35 and 36) makes provision for the local authority to apply for a child assessment order if it has reasonable cause to suspect that a child has been, or is being treated or neglected in such a way that the child is suffering or is likely to suffer significant harm; that an assessment is needed to establish whether there is reasonable cause to believe that the child is being so treated or neglected; and that it is unlikely that an assessment to establish this could be carried out (or carried out satisfactorily) without obtaining the order (for example, where those with parental responsibility are preventing an assessment of the child being undertaken to confirm or refute the concern). The child assessment order can require the parents or carers to produce the child and allow any necessary assessment (subject to the consent of the child) to take place so that practitioners can decide whether they should act to safeguard the child's welfare. On application to the Sheriff for a child assessment order, if the Sheriff believes that the conditions for making a child protection order exist, he/she may issue a child protection order instead.</p>	<p><b>ASSESSMENT ORDER</b></p> <p>Allows a council officer to conduct a private interview, and a health professional to conduct a medical examination in private. The adult must be informed of their right to refuse. This order would be necessary only if it were not possible to carry out the interview or examination at the place of the visit. A warrant for entry will also be granted. Valid from the date specified in the order and expires 7 days after that date. Only be granted by a Sheriff (s11-13, s38).</p>
<p><b>CHILDREN'S HEARINGS</b></p> <p>The children's hearings system is a system of statutory intervention in the life of a child and their family. The statutory intervention takes the form of an order such as Compulsory Supervision Order (CSO), and a CSO is issued by a children's hearing or by a Sheriff. The children's hearings system deals with referrals in the same way, regardless of the ground on which the child has been referred e.g. whether they have been referred for care and protection concerns or as a result of their own behaviour, which can include offending.</p>	



## LARGE SCALE PROTECTION ACTIVITY

**There is not a large-scale investigation framework under child protection guidance.**

For children or young people at risk in a residential children's home, for example, standard child protection measures should be followed. The responsible local authority social work department (lead professional agency) would lead for each young person at risk, although in many cases this will be jointly investigated with police. Where there is a need to investigate the circumstances of more than one child, it may be that these investigations are coordinated jointly. Scrutiny activity of the Care Inspectorate would also be triggered via mandatory reporting processes to them. By law all care services must notify the Care Inspectorate immediately if **certain events** take place.

**LARGE SCALE INVESTIGATIONS (LSI)**

An LSI is specific to adult support and protection processes.

- An LSI may be carried out if one or more of the following criteria is present:
- An adult protection referral is received that involves two or more adults living within or cared for by the same service or care provider
- A referral is received regarding one adult, but the nature of the referral raises queries regarding the standard of care provided by a service
- Where more than one perpetrator is suspected
- Institutional harm is suspected
- A whistle-blower has made serious allegations regarding a service
- There are significant concerns regarding the quality of care provided and a service's ability to improve. These concerns could come from a regulatory body such as the Care Inspectorate or Healthcare Improvement Scotland
- An adult or adults are living independently within the community but are subject to harm from a perpetrator or group of perpetrators, or it is strongly suspected that more than one adult is subject to such harm
- Concerns regarding an adult are raised following their admission to hospital or discharge. This may include concerns about a care service that are evidenced by an admission to hospital, or concerns regarding an NHS service area
- Concerns are raised via a complaint to the Care Inspectorate, NHS Board, or the local Council or Health and Social Care Partnership
- Concerns are raised by GPs, District Nurses, Dentists, Allied Health Professionals, social workers, social care staff, etc. who attend a service.

***The Adult Support and Protection National Large Scale Investigation***

***Framework*** lays out how LSIs should be carried out and is accessible on the Iriss website.

## PARTICIPATION OF CHILD OR ADULT AT RISK OF HARM AND THE ROLE OF ADVOCACY

Paragraphs 1.136-.141 of the National Guidance are about the involvement of children.

Article 12 of the United Nations Convention on the Rights of the Child (UNCRC) must inform the approach to participation of children in child protection processes. This makes no restrictive presumption about age. Article 12 states: “States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”

There is no age limit on the right of the child to express their views. Practitioners must not begin with the assumption that a child is incapable of expressing her or his own views, but rather presume that a child has the capacity to form their own views and recognise that she or he has the right to express them. Advocacy, translation or communication support may be needed.

Practitioners must consider whether the child has the capacity to make their own decisions. Under the Data Protection Act 2018, a child under the age of 16 must be treated as though they have capacity to exercise their rights under that Act, if there is reason to believe that the child has a general understanding of what it means to exercise those rights.

If a child is too young or immature to understand the full implications of information sharing practitioners should seek the consent of the parent on behalf of their child unless there are good reasons not to do so, in which case these reasons should be recorded.

In general, it should be assumed that a child who is over the age of 12 years has reached the age where they have the necessary level of maturity to have this understanding, unless there is evidence to the contrary.

The adult’s views and wishes are central to adult support and protection, and every effort should be made at each stage of the process to ensure that barriers to the adult’s participation are minimised. Undue pressure on the adult from another party is one barrier which can occur. It is good practice to consider the best ways to check at various stages with the adult how included they feel and ensure they have the opportunity to highlight if they feel excluded at any point. **Supported decision making** may be appropriate to consider for some people. All decisions must be clearly recorded and explained to the adult. The adult should be provided with assistance or material appropriate to their needs to enable them to make their views and wishes known.

There should be a basic assumption that the adult will be involved in all meetings that are about them. There will be times when this will not be appropriate but, in all cases, reasons should be recorded in the minute of the meetings explaining why the adult was not present.

If the fullest possible participation of the adult at risk in decision-making, supporting, and protecting them from harm is to be achieved, they should be included in ways that take into account their needs and ability to participate. Good practice in adult protection is no different from good practice in other areas such as care and treatment of mental illness, self-directed support, or commissioning of services to meet assessed individual needs.

Section 6 of the Act places a duty on the council, if it considers that it needs to intervene to protect an adult at risk of harm, after making inquiries under Section 4 of the Act, to have “regard to the importance of the provision of appropriate services (including, in particular, independent advocacy services) to the adult concerned”. Independent advocacy aims to ensure that a person’s voice is listened to and their views taken into account; to support access to information; and to assist people to navigate systems.

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<p>Implementation of Article 12 requires recognition of, and respect for, non-verbal forms of communication including play, body language, facial expressions, and drawing and painting, through which very young children demonstrate understanding, choices and preferences.</p> <p>There is also a section in Part 3 of the National Guidance on Consideration of the child's involvement in Child Protection Planning Meetings.</p>	<p>The adult should be asked if they know about and would like advocacy support. Where advocacy is offered, declined by the adult, or not deemed appropriate, the reasons for this should be clearly recorded, as should the reasons for not referring to any other 'appropriate' services. This decision should be re-visited and recorded at each formal review e.g. multi-agency meetings, reviews or professional meetings.</p>

**APPROPRIATE ADULTS**

Appropriate Adults provide communication support to vulnerable victims, witnesses, suspects and accused persons, aged 16 and over, during police investigations. The role of the Appropriate Adult is to facilitate communication between a person with communication support needs and the police and, as far as is possible, ensure understanding by the individual. Communication support needs may be due to mental health challenges, learning disability, personality disorder and/or other factors including brain injury, cognitive impairment and neurodiversity such as autism and ADHD.

Although not a statutory responsibility, a small number of services provide Appropriate Adult support to people during Court processes.

Appropriate Adults:

- Identify how a person's communication support needs may impact their understanding of proceedings
- Raise any concerns about the person's communication needs or welfare with the police or other relevant organisations
- Ensure, as far as possible, the person understands their rights and any questions asked of them
- Always remain impartial
- Have an awareness of police procedures
- Where applicable, ensure, as far as possible, that the person understands a procedure so they can decide whether to consent or not
- Are not protected by confidentiality. This means anything they become aware of must be shared with the relevant authorities including concerns of harm
- Are not qualified to provide a formal assessment of an individual's health or communications issues

## MEDICAL EXAMINATIONS

Carrying out a medical assessment, and deciding which type of medical examination is made, is a decision made by a doctor informed by multi-agency discussion with police, social work and any other relevant health staff. Planning should keep the number of examinations to a minimum. The decision to conduct a medical examination may:

- Follow from an IRD and inter-agency agreement about the timing, type and purpose of assessment
- Follow when a person presents to health services

The main types of medical examination that may be undertaken within the Child Protection process are:

- Joint Paediatric Forensic Examination (JPFE): Examination by a paediatrician and a forensic physician. This is the usual type of examination for sexual assault and is often undertaken for physical abuse, particularly infants with injuries or older children with complex injuries.
- Single doctor examinations with corroboration by a forensically trained nurse. These are sexual assault examinations undertaken for children and young people aged 13-16. In some areas/situations a JPFE would occur, and in all areas/situations JPFE should be considered.
- Specialist Child Protection Paediatric/Single Doctor/Comprehensive Medical Assessment. This type of examination is often undertaken when there is concern about neglect and unmet health needs but may also be used for physical abuse and historical sexual abuse. Comprehensive medical assessment for chronic neglect can be arranged and planned within localities when all relevant information has been collated. However there may be extreme cases of neglect that require urgent discussion with the Child Protection Paediatrician.

Where this person is under 18, the Code of Practice suggests that liaising with children's services and paediatrics may be relevant with regards to medical examinations. A medical examination may be carried out on an adult believed to be at risk of harm. A council officer must be responsible for arranging a medical examination, which must be carried out by a qualified health professional. Consideration must be given to how and where medical examinations are undertaken; however examinations can happen at a place being visited under Section 7 of the Act, or at the premises where the adult has been taken under an assessment order granted under Section 11.

A medical examination may be required as part of investigation activity for a number of reasons including:

- The adult's need of immediate medical treatment for a physical illness or mental disorder;
- To provide evidence of harm to inform a criminal prosecution under police direction or an application for an order to safeguard the adult;
- To assess the adult's physical health needs; or
- To assess the adult's mental capacity.

Adults must give informed consent for the carrying out of a medical examination. Where this is not possible, a guardian or attorney must be consulted for consent. Examples of circumstances where a medical examination should be considered include:

- The adult has a physical injury which he or she states was inflicted by another person;
- The adult has injuries where the explanation (from the adult or other person) is inconsistent with the injuries and an examination may provide a medical opinion as to whether or not harm has been inflicted, or whether there are concerns around self-harm

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The health assessment of a child for whom there are child protection concerns aims:

- To establish what immediate treatment the child may need
- To provide a specialist medical opinion on whether or not child abuse or neglect may be a likely or unlikely cause of the child's presentation
- To support multi-agency planning and decision-making
- To establish if there are unmet health needs, and to secure any on-going health care (including mental health), investigations, monitoring and treatment that the child may require
- To listen to and to reassure the child
- To listen to and reassure the family as far as possible in relation to longer-term health needs

The Age of Legal Capacity (Scotland) Act 1991 allows a child under the age of 16 to consent to any medical procedure or practice if in the opinion of the qualified medical practitioner the child is capable of understanding the nature and possible consequences of the proposed examination or procedure. Children who are assessed as having capacity to consent can withhold their consent to any part of the medical examination, for example, the taking of blood, or a video recording. Consent must be documented within medical notes and must reflect which parts of the process have been consented to and by whom. This includes consent to forensic medical examination.

In order to ensure that children and their families give properly informed consent to medical examinations, it is the role of the examining doctor, assisted if necessary by the social worker or police officer, to provide information about all aspects of the procedure and how the results may be used; and to ensure informed consent has been obtained. Where a medical examination is thought necessary for the purposes of obtaining evidence in criminal proceedings but the parents/carers refuse their consent, the Procurator Fiscal may, in exceptional circumstances, consider obtaining a warrant for this purpose.

- There is an allegation or disclosure of sexual abuse and the type of assault may have left physical evidence (following local procedures for liaison with the police);
- The adult appears to have been subject to neglect or self-neglect and is ill or injured and no treatment has previously been sought.

Adults have the right to refuse to consent to a medical examination, and they must be made aware of this before an examination. The capacity of the adult to consent to a medical examination needs to be ascertained. When practitioners are unsure of the adult's capacity, they can consider:

- Does the adult understand the nature of what is being asked and why?
- Is the adult capable of expressing their wishes/choices?
- Does the adult have an awareness of the risks/benefits involved?
- Can the adult be made aware of their right to refuse to answer questions as well as the possible consequences of doing so

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However, where a child who has legal capacity to consent declines to do so, the Procurator Fiscal will not seek a warrant.

The Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (“FMS Act”), creates a statutory duty for health boards to provide Forensic Medical Services (FMS) for victims of sexual offences and will establish a legal framework for consistent access to self-referral so a victim can access healthcare and request a Forensic Medical Examination (FME) without first having to make a report to the police. This service is called ‘self-referral’ and will be available to those aged 16 and over, subject to professional judgement. Subject to that professional judgement, a self-referral service allows young people aged 16 and 17 years, who have experienced rape or sexual assault the opportunity to access appropriate support and healthcare services as well as a FME to collect any potential evidence, at a time when they do not feel ready to report to the police.

The ***Clinical Pathway for Health Care Professionals Working to Support Children and Young People who may have Experienced Child Sexual Abuse*** supports practitioners to consider vulnerability when making judgements about referring the young person to IRD. The following list, whilst in no way exhaustive, provides examples of potential indicators of vulnerability that should be considered for further discussion with partners and, based on professional judgement, could indicate the need for referral to child or adult protection procedures, including an IRD. It should be noted that this list is only an indication, it is not absolute and clinicians can and should refer any young person to IRD should they believe they are, or another child may be, at risk of significant harm.

The young person self-referring:

- Lacks capacity to consent to the medical examination
- Is defined as a child for the purposes of the Children’s Hearings System
- Is a Looked After Child or has experience of care

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- Self-referred previously
- Was under the influence of drugs or alcohol at the time of the offence
- Intimate that they may have been drugged
- Has other injuries such as bruising, which may indicate a violent assault
- Provides an address in a different area or locality, which may indicate they have been trafficked
- Has any indicators of Child Sexual Exploitation or Child Criminal Exploitation
- Has any indicators of Honour Based Violence or FGM

In addition, if a young person provides information about a perpetrator or these indicators are present then Police Scotland should be contacted immediately:

- If the perpetrator is an adult family member with potential continued access to the young person or other children
- If the perpetrator is a sibling of the young person
- If the perpetrator holds a position of trust such as teacher, police officer, medical professional, social worker, youth worker, foster parent, runs/involved in a club or organisation that other children attend

## LEARNING REVIEWS

ASP Learning Review Guidance is largely similar to that for Child Protection and some local areas have (or are taking steps to) amalgamate their local Learning Review procedures to apply across all ages. The national guidance for **child protection** and **adult protection** learning reviews can be accessed on the Scottish Government website.

At the time of writing (October 2023), one noteworthy distinction between the two sets of guidance is the Tripartite Protocol to be followed between CPCs, Police Scotland, and the Crown Office Procurator Fiscal Service when a CP Learning Review is underway and certain circumstances are applicable.

\* For both children and adult Learning Reviews, the guidance identifies the Care Inspectorate as the central repository for all learning reviews, enabling learning from these reviews to be shared more widely. As such, it is important that all case reviews or reflective learning reviews that are similar in purpose though not labelled as a learning review, are also submitted to the Care Inspectorate.

**Learning Reviews** (formerly known as Initial Case Reviews and Significant Case Reviews) replace initial or significant case reviews and are not investigations. They intend to move away from apportioning blame and create a learning culture.

A Child Protection Committee will undertake a Learning Review in the following circumstances:

When a child has died or has sustained significant harm or risk of significant harm as defined in the National Guidance for Child Protection in Scotland 2021 and there is additional learning to be gained from a Review being held that may inform improvements in the protection of children and young people and one or more of the following apply:

- Abuse or neglect is known or suspected to be a factor in the child's death or the sustaining of or risk of significant harm
- The child is on, or has been on, the Child Protection Register (CPR) or a sibling is or was on the CPR or was a care experienced child (i.e. looked after, or receiving aftercare or continuing care from the local authority).

An Adult Protection Committee will undertake a **Learning Review** (formerly known as Initial Case Reviews and Significant Case Reviews) in the following circumstances:

1. Where the adult is, or was, subject to adult support and protection processes and the incident or accumulation of incidents gives rise for reasonable cause for concern about how professionals and services worked together to protect the adult from harm, and one or more of the following apply:
  - (i) The adult at risk of harm dies and
    - Harm or neglect is known or suspected to be a factor in the adult's death;
    - The death is by suicide or accidental death;
    - The death is by alleged murder, culpable homicide, reckless conduct, or act of violence.
  - or
  - (ii) The adult at risk of harm has not died but is believed to have experienced serious abuse or neglect



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This is regardless of whether or not abuse or neglect is known or suspected to be a factor in the child's death or sustaining of significant harm, unless it is absolutely clear to the Child Protection Committee that the child having been on the CPR or being care experienced has no bearing on the case

- The child's death is by suicide, alleged murder, culpable homicide, reckless conduct, or act of violence

Learning Reviews may also be undertaken where effective working has taken place and outstanding positive learning can be gained to improve practice in promoting the protection of children and young people.

### CHILD DEATH REVIEWS

Hosted by Healthcare Improvement Scotland and the Care Inspectorate, the National Hub for Reviewing and Learning from the Deaths of Children and Young People will ensure reviews are conducted on the deaths of all children up to the date of their 18th birthday, or 26th birthday for care leavers who are in receipt of aftercare or continuing care at the time of their death.

If the child or young person who was the subject of the Learning Review has died, then the National Hub requires the completion of the Core Review Data Set at the conclusion of the Learning Review Process. More information about the National Hub can be found on the Healthcare Improvement Scotland website.

## ADULT SUPPORT AND PROTECTION LEGISLATION

2. Where the adult who died or sustained serious harm was not subject to adult support and protection processes

(i) When the findings of an inquiry or review by another organisation or court proceedings, or a referral from another organisation gives rise to reasonable cause for concern about lack of involvement in relation to the Adult Support and Protection (Scotland) Act 2007

or

(ii) The Adult Protection Committee determines there may be learning to be gained through conducting a Learning Review.

### WHO CAN REQUEST A LEARNING REVIEW?

Any agency with an interest in an adult's wellbeing and safety can request that a case be considered for review by the Adult Protection Committee where they consider the criteria for review is met. It should be noted that concerns raised by families and addressed through the relevant agency's normal complaints procedure may also be a trigger for a Learning Review, where the agency considers the criteria for a review is met. The agency addressing the complaint should refer the circumstances to the Adult Protection Committee for their consideration at the earliest opportunity.

### INTER-RELATED INVESTIGATIONS, REVIEWS AND OTHER PROCESSES

There are a number of other processes, including criminal investigations and NHS Significant Adverse Event Reviews, that could be running in parallel with a Learning Review. Depending on the case, there could be a number of processes which come into play which are driven by considerations wider than service failure or learning lessons across agencies. These can include disciplinary processes, criminal investigation, report of death to Procurator Fiscal or a Fatal Accident Inquiry. In addition to this, agencies should ensure that the areas for improvement identified and shared learning are directed through the relevant clinical and care, or quality assurance, governance arrangements.

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These processes may impact on whether a review can be easily progressed or concluded; criminal investigations always have primacy. To help establish what status a Learning Review should have relative to other formal investigations, on-going dialogue with Police Scotland, COPFS or others to determine how far and fast the Learning Review process can proceed in certain cases.

There could be cross-cutting issues, for example, gender-based violence, human trafficking, or problematic alcohol and drugs use.

Processes can, and do, run in tandem, and the basic principles to follow are: check if there are other processes going on from the start; ensure good communication with each other; and ensure the relevant information is shared with the right parties. Above and beyond this, the priority is that the adult is, and remains safe, regardless of other ongoing investigations (including criminal investigations). Consideration should be given to the safety of other adults who could also be at risk of harm. The rights of staff or others who are under investigation, but have not been charged or found guilty, is another factor to be taken into account.



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Iriss is a charitable company limited by guarantee. Registered in Scotland: No 313740.  
Scottish Charity No: SC037882. Iriss is part funded by the Office of the Chief Social  
Work Adviser (OCSWA) in the Scottish Government.